IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.868 OF 2004

Santosh Himatrao Bhosale, .. Petitioner
vs
Raghunath Dattatraya Dhanayat
and ors. .. Respondents

Mr P.S.Dani, for the petitioner.
Mr P.N.Joshi, for respondent nos 1A and 1B.

CORAM : D.B.BHOSALE,J.

DATE : FEBRUARY 22, 2005.

P.C.

1. Rule. Returnable forthwith. Mr Joshi, learned counsel, waives service for the respondents. By consent, rule is heard finally.

2. This petition is directed against the judgment and order dated 17.10.1994 passed in Civil Misc. Appeal No.118 of 1994 filed by the petitioner-defendant. The Misc. Appeal was directed against the judgment and order dated 21.3.1994 passed by the trial Court in Misc. Application No.74 of 1992. That application was filed by the petitioner under Order 9, Rule 13 of the Code of Civil Procedure for setting aside exparte decree and restoration of Regular Civil Suit No.837 of 1987 and its disposal on merits. The suit was filed by the

respondent-plaintiff for possession of the tenement in occupation of the petitioner on the ground of non-user as contemplated under section 13(1)(k) of the Bombay Rents Hotel and Lodging House Rates Act. The impugned order was earlier challenged by way of Civil Revision Application bearing No.722 of 1994. That revision was admitted and the interim relief was also granted by this Court. However, the said revision application came to be dismissed as not maintainable on 30.11.2002. Hence, the petitioner filed the instant writ petition challenging the order that was impugned in the civil revision application.

3. The only submission advanced by Mr Dani, learned counsel for the petitioner was that the summons in the suit was not served upon the petitioner and/or on any adult male member of his family as contemplated under Rule 15, Order 5 of CPC (Bombay Amendment). Rule 15 of Order 5 reads thus:

> "15. Where service may be on male member of defendant’s family:-
>
> When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his

behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation: A servant is not a member of the family within the meaning of this rule. (1.10.83)."

4. Admittedly, in the instant proceedings the summons in the suit was served upon the female member in the family of the petitioner, namely, his wife. In view of this, the learned counsel appearing for the parties fairly stated that detailed reasons need not be recorded for allowing this petition. However, Mr Joshi, learned counsel for the respondent submitted that the trial Court be directed to dispose of the suit on merits within time frame. In the circumstances, rule is made absolute in the following terms:

(i) The Judgment and order dated 17.10.1994 passed by Vth Addl.District Judge, Nashik in Civil Misc. Appeal No.118 of 1994 and the judgment and order dated 21.3.1994 passed by Vth Jt Civil Judge, J.D.Nashik in Misc.Application No.74 of 1992 are set aside.

(ii) The application filed by the petitioner-defendant under Order 9, Rule 13 of the C.P.C, for setting aside exparte decree is allowed. The exparte judgement and order dated 4.7.1991 passed in R.C.Suit No.837/1987 is set aside.

(iii) Regular Civil Suit No.837 of 1987 stands restored to file. The trial Court shall endeavour to decide the suit as expeditiously as possible and preferably within a period of one year from today.

(iv) The petitioner to produce a copy of this order before the trial Court within four weeks from today. The trial Court shall decide the suit on merits in accordance with law.

(v) The writ petition is disposed of.

(D.B.Bhosale, J.)